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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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Supplement No.33 (A/50/33)

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CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 11	1
II.	RECOMMENDATIONS OF THE SPECIAL COMMITTEE	12	3
III.	GENERAL DEBATE	13 - 33	4
IV.	MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY	34 - 49	9
	A. Consideration of the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter	35 - 42	9
	B. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security	43 - 46	11
	C. Consideration of the working paper submitted by Cuba under the title "Strengthening of the role of the United Nations in the maintenance of international peace and security; strengthening of the role of the Organization and enhancing its effectiveness"	47 - 49	13
V.	PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES	50 - 63	16
	A. Consideration of the draft United Nations Model Rules for the Conciliation of Disputes between States	51 - 55	16
	B. Consideration of the proposal submitted by Sierra Leone under the title "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes"	56 - 63	24
VI.	QUESTION OF THE DELETION OF THE "ENEMY STATE" CLAUSES OF THE CHARTER OF THE UNITED NATIONS	64 - 65	31
VII.	REVIEW OF THE MEMBERSHIP OF THE SPECIAL COMMITTEE	66 - 67	32

I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 49/58 of 8 December 1994 and met at United Nations Headquarters from 27 February to 10 March 1995.

2. In accordance with General Assembly resolutions 3349 (XXIX) of 17 December 1974 and 3499 (XXX) of 15 December 1975 and decision 45/311 of 28 November 1990, the Committee is composed of the following Member States: Algeria, Argentina, Barbados, Belgium, Brazil, China, Colombia, Congo, Cyprus, Czech Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Ghana, Greece, Guyana, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Japan, Kenya, Liberia, Mexico, Nepal, New Zealand, Nigeria, Pakistan, Philippines, Poland, Romania, Russian Federation, Rwanda, Sierra Leone, Spain, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Yugoslavia and Zambia. 1/

3. On behalf of the Secretary-General and in the absence of Mr. Hans Corell, the Legal Counsel, Mr. Sinha Basnayake, Director of the General Legal Division in charge of the Office of Legal Affairs, opened the 1995 session of the Special Committee and made a statement.

4. Miss Jacqueline Dauchy, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Special Committee and of its Working Group. Mr. Manuel Rama-Montaldo, Deputy Director for Research and Studies of the Codification Division, acted as Deputy Secretary of the Special Committee and of its Working Group. Mr. Mpazi Sinjela, Ms. Christiane Bourloyannis-Vrailas and Mr. Vladimir Rudnitsky, Legal Officers from the Codification Division, acted as assistant secretaries of the Special Committee and its Working Group.

5. At its 197th and 198th meetings, on 27 February 1995, the Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981, 2/ and taking into account the results of the pre-session consultations among its Member States, elected its Bureau, as follows:

Chairman: Mr. Nalin Surie (India)

Vice-Chairmen: Mr. Ernst Martens (Germany)
Mr. Marek Madej (Poland)
Mr. Hussein Mubarak (Egypt)

Rapporteur: Mr. Guillermo Camacho (Ecuador)

6. The Bureau of the Committee also served as the Bureau of the Working Group.

7. Also at its 197th meeting, the Committee adopted the following agenda (A/AC.182/L.80):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 49/58 of 9 December 1994, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. In accordance with paragraph 6 of General Assembly resolution 49/58, the Special Committee, having received requests for observer status from 27 permanent missions to the United Nations (Australia, Austria, Azerbaijan, Belarus, Bolivia, Bulgaria, Canada, Cuba, Democratic People's Republic of Korea, Denmark, Guatemala, Jordan, Kazakhstan, Libyan Arab Jamahiriya, Morocco, Netherlands, Panama, Portugal, Republic of Korea, Republic of Moldova, Slovakia, Sri Lanka, Sweden, Syrian Arab Republic, Thailand, Ukraine and Uruguay), took note of those requests and accepted the participation of observers from those Member States.

9. At its 199th meeting, the Committee established a Working Group of the Whole and agreed on the following organization of work: three meetings would be devoted to organizational matters and to a general debate on all items concerning the mandate of the Committee; four meetings would be allocated to proposals relating to the maintenance of international peace and security; five meetings to the question of peaceful settlement of disputes between States; two meetings to the question of the deletion of the "enemy State" clauses of the Charter of the United Nations; one meeting to the review of the Special Committee's membership; and four meetings to the consideration and adoption of the report. It was understood that this distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items.

10. With regard to the question of the maintenance of international peace and security, the Committee had before it a revised working paper entitled "Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter", submitted at the previous session by Bulgaria, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Jordan, Mozambique, Nicaragua, Nigeria, Panama, Paraguay, Poland, the Republic of Moldova, Romania, Uganda, Ukraine, Uruguay and Zambia, later joined by India and Tunisia (A/AC.182/L.79); 3/ a working paper submitted by the Russian Federation entitled "New issues for consideration in the Special Committee"; 4/ a revised proposal submitted by the Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security (see para. 43 below); and a second revised working paper submitted by Cuba, entitled "Strengthening of the role of the Organization and enhancement of its efficiency" (see para. 47 below).

11. With respect to the question of the peaceful settlement of disputes between States, the Committee had before it the text of the United Nations Model Rules for the Conciliation of Disputes between States as it emerged from the first reading conducted by the Special Committee at previous sessions, 5/ as well as a working paper submitted by Guatemala (A/AC.182/L.83) containing amendments to the above-mentioned text of the Model Rules. It also had before it a proposal entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", submitted by Sierra Leone (see para. 56 below).

II. RECOMMENDATIONS OF THE SPECIAL COMMITTEE

12. The Special Committee submits to the General Assembly:

(a) As regards the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the recommendation reproduced in paragraph 42 below;

(b) As regards the United Nations Model Rules for the Conciliation of Disputes, the recommendation reproduced in paragraph 55 below;

(c) As regards the question of the deletion of the "enemy State" clauses from the Charter of the United Nations, the recommendation reproduced in paragraph 65 below;

(d) As regards the membership of the Special Committee, the recommendation reproduced in paragraph 67 below.

III. GENERAL DEBATE

13. In accordance with the decision taken at its 199th meeting on the organization of its work, the Special Committee held a general debate at its 199th to 201st meetings, from 28 February to 6 March 1995.

14. It was observed that the 1995 session of the Special Committee was taking place against the backdrop of the fiftieth anniversary of the United Nations and the twentieth anniversary of the establishment of the Committee. This provided an opportunity for an assessment of the Special Committee's role in strengthening the United Nations and enabling it to meet the challenges of the post-cold-war era. Some representatives highlighted the achievements of the Special Committee, among which is the recent adoption by the General Assembly of the Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security (General Assembly resolution 49/57 of 9 December 1994). Others, however, expressed the view that the Special Committee had moved away from its original mandate, namely, to consider the need for a review of the provisions of the Charter. One delegation suggested that it would be appropriate for the Committee to focus on the implementation of existing provisions and on readying itself to make legal input into decisions taken elsewhere concerning possible amendments to the Charter.

15. For some delegations, the time had come to review the composition of the Special Committee and to consider its transformation into an open-ended body, given the interest of all Members of the United Nations in the issues covered by its mandate, which was evidenced by the large number of observers participating in its sessions, and bearing in mind the increase in the membership of the Organization since the establishment of the Committee. Given the fact that, for all practical purposes, there was no distinction between members and observers, those representatives concluded that no valid objection could be raised to an increase in the membership of the Committee. The view was expressed that there was a general trend for ad hoc committees in the legal field to be open-ended. For other delegations, once the distinction between members and observers was dispensed with (except with regard to participation in decision-making), it was no longer necessary to depart from current practice. It was also pointed out that an open-ended composition could compromise the success of the work, since the questions falling under the Committee's mandate were delicate ones. As regards methods of work, the view was expressed that consensus, which had made it possible to adopt a number of important instruments, should continue to be the basis of the Committee's decision-making process. It was suggested that the Special Committee should again at its next session meet for two rather than three weeks, bearing in mind that time and resources could be saved if the Committee agreed not to hold a general debate.

16. With respect to the question of increase in the membership of the Security Council, and other matters related to the Council, it was recalled that the issue was being discussed in detail in the open-ended Working Group established by General Assembly resolution 48/26. The point was made, however, that the Special Committee could make a contribution to this discussion, particularly with regard to the legal aspects of the matter. Reference was also made to the relevant working papers submitted by Cuba 6/ and the Libyan Arab Jamahiriya. 7/ The view was expressed that the composition of the Council should become more representative of present-day realities, taking into account the principles of sovereign equality and equitable geographical distribution. It was also said that the permanent membership of the Council should be enlarged taking into

consideration political, strategic, economic and demographic factors. The remark was made, on the other hand, that the inequity inherent in the concept of permanent membership should not be expanded, and that only the non-permanent membership should be increased. As for the decision-making process of the Security Council, a call was made for greater transparency, accountability and democratization. The need to review the use of the veto was underlined in this connection.

17. The point was made that, although the issue of the revitalization of the General Assembly had been discussed in a separate Working Group, the Special Committee also had a role to play in this respect. The view was expressed that the relationship between the Assembly and the Security Council should be reconsidered. A number of measures were suggested in this regard, such as more frequent consultations between the Presidents of the two organs and the improvement of mechanisms for the exchange of information.

18. The importance of the question of assistance to third States affected by the application of sanctions was highlighted by most speakers. Reference was made, in this connection, to the relevant observations and suggestions contained in the report of the Secretary-General entitled "Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations" (A/50/60-S/1995/1). The Secretary-General was urged to submit before the fiftieth session of the General Assembly the separate report called for under General Assembly resolution 49/58 of 9 December 1994. It was suggested that the report should include an analysis of the experience gained by international financial institutions in the evaluation of damages suffered by third States as the result of the imposition of sanctions, in order to study the possibility of elaborating a uniform methodology for that purpose. It was further suggested that the report address the proposal regarding the introduction, in the administration of sanctions regimes, of an element of cost recovery from those making applications to a sanctions committee. It was also noted that the proposal contained in the "Supplement to an Agenda for Peace" was compatible with and could be included in paragraph 8 of document A/AC.182/L.79.

19. With reference to Article 50 of the Charter, the remark was made that no right to automatic compensation was envisaged in the provision in question. On the other hand, the view was expressed that the countries which carried the burden of sanctions implementation should be able to rely on specific resources for alleviating the negative impact of such sanctions on their economies. It was proposed that Article 50 should be amended so as to provide for the entitlement of affected third States to at least partial compensation.

20. Support was expressed for the establishment of a permanent mechanism for consultations between the Security Council and potentially affected third States, which might include: a preliminary assessment of sanctions or a pre-feasibility study based on objectivity and cost-effectiveness in terms of burden-sharing; regimes of exemption and criteria for suspension; and effective ways and means for addressing special economic problems arising from sanctions implementation. The point was made, however, that care should be taken not to subject the discharge by the Security Council of its functions to conditions that might hamper its ability to impose sanctions rapidly and effectively. While sanctions were described as a useful instrument for the maintenance or restoration of international peace, the view was also expressed that they were not necessarily the most appropriate method for the resolution of international disputes. The view was expressed that there was a lacuna in the Charter inasmuch as there were no provisions for the assessment of the suffering of the

civilian population in countries subject to sanctions, that it would be necessary to establish means of preventing human disasters caused by the implementation of sanctions and that the Special Committee should discuss this issue at its next session. The view was also expressed that the Security Council had exempted food and medicine from the sanctions regime, that the Council had also made other exemptions, and that the situation of the target State was different from that of innocent third States.

21. The idea of reinforcing those sections of the Secretariat dealing directly with sanctions, as envisaged by the President of the Security Council in his statement of 22 February 1995 (S/PRST/1995/9), including the consideration of submissions of affected third States, was favourably commented upon. It was further suggested that there should be more transparency in the procedures of the sanctions committees, even though the point was also made that the sensitive issues in their mandate were more appropriately discussed in closed meetings. The following specific proposals were made: that a press release be issued, as a general rule, after each meeting of each sanction committee; that a monthly edition of the status of communications under the "no objection" procedure be prepared by the Secretariat in respect of the committees established under Security Council resolutions 661 (1990) of 6 August 1990 and 724 (1991) of 15 December 1991; that the Secretariat also prepare a monthly list of favourable decisions by each active committee; that the report of the Security Council to the General Assembly contain more information on the work of such committees; that consideration be given to the publication of an annual report by each committee; and that the summary records of the committees be issued in a more timely fashion.

22. The working methods of the sanctions committees were furthermore viewed by some members as ill-adjusted to the purposes of the Charter. In particular, it was said that the mandate of the committees was unclear, that the principle of consensus had been turned into a right of veto, that the country directly affected by the sanctions was excluded from participation and that the proceedings of the committees lacked transparency.

23. As to the means of alleviating the economic burden placed on third States by the imposition of sanctions, some representatives were of the view that a fund should be established to provide automatic and equitable compensation to affected States. It was suggested that such fund should be financed from assessed contributions and voluntary contributions, as contemplated in working paper A/AC.182/L.79.

24. Other representatives considered that the establishment of a trust fund was not feasible; they placed particular emphasis on bilateral assistance and on the role of international financial institutions. The point was made that the expertise of such institutions, as well as that of donor countries, should be taken advantage of in the elaboration of assistance measures, which should be flexible and adapted to each specific case. It was suggested that international financial institutions open special windows of credit to provide direct assistance or to support technical projects and that the compensatory and contingency financing facility of the International Monetary Fund should be more actively utilized. As regards bilateral measures, it was felt that the possibilities offered by trade preferences and investments in particularly affected industries deserved to be further explored.

25. The view was expressed that the Security Council should consider on a case-by-case basis whether exceptions from the sanctions regime could be made in

favour of the most adversely affected third States, provided that such exceptions did not run counter to the purpose of the sanctions.

26. It was recalled that the issue of the effect of sanctions was to be addressed within the framework of round-table discussions at the forthcoming United Nations Congress on Public International Law.

27. As regards the question of peaceful settlement of disputes, emphasis was placed on the need to enhance the Organizations's capacity in the field of early warning, fact-finding and preventive diplomacy. The need for a closer partnership between the Security Council and the Secretary-General in these areas was also underlined.

28. The hope was expressed that the useful work of the Special Committee on the United Nations Model Rules for the Conciliation of Disputes between States would come to a conclusion at the current session. It was observed, in this context, that the principle of free choice of means for the peaceful settlement of disputes was paramount, and that it was up to the parties to determine in each situation whether to resort to conciliation and, if so, how the procedure should be conducted. Some delegations recommended that more flexibility be introduced in the Model Rules.

29. Representatives expressed readiness to consider the proposal on the establishment of a dispute settlement service offering or responding with its services early in disputes. Doubts were, however, expressed if the establishment of a board of administrators would assist the Secretary-General in his efforts in this area. The view was also expressed that there was a need to avoid any duplication that did not contribute to the rationalization of the work and procedures of the United Nations.

30. Proposals on the enhancement of the role of the International Court of Justice were viewed as worthy of consideration, and States that had not yet accepted the compulsory jurisdiction of the Court were encouraged to do so.

31. The "enemy State" clauses of the Charter were described as obsolete, and support was expressed for their deletion. Some representatives held that action along those lines should be taken as soon as possible, independent of the work carried out by the Working Group on the question of increase in the membership of the Security Council, and other matters related to the Council; they noted that the fiftieth anniversary of the United Nations offered a fitting opportunity in this respect. Other representatives considered that the matter was not of an urgent nature, and that the decision as to the timing for the process of deletion of the clauses concerned should take into account the progress made in the discussions in the above-mentioned Working Group, so as to avoid repeated recourse to the procedure envisaged in Article 108 of the Charter. A view was also expressed that these clauses had not lost their relevance as far as one particular country was concerned. Strong disagreement was expressed with that view.

32. As to the precise manner in which the Charter should be amended to remove the references to "enemy States", a proposal was made to delete the latter part of paragraph 1 of Article 53, beginning with the words "with the exception of measures against any enemy State"; to delete paragraph 2 of Article 53; to reformulate paragraph 1 b. of Article 77 to read: "territories which may have been detached as a result of the Second World War"; and to reformulate Article 107 to read: "Nothing in the present Charter shall invalidate or preclude action already taken or authorized as a result of the Second World War

by any Government representing a State which was an original signatory of the present Charter."

33. At the end of the session, all the participants expressed their deep gratitude and appreciation to the Chairman, Mr. Nalin Surie, for his excellent guidance, dedication and outstanding contribution, with the efficient help of the members of the Bureau and the Secretariat, to the successful outcome of the work.

IV. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

34. In accordance with the decision taken by the Special Committee at its 195th meeting pursuant to paragraph 4 (a) of General Assembly resolution 49/58, the question of the maintenance of international peace and security was considered by the Working Group at its 1st to 4th, 11th and 12th meetings, from 27 February to 9 March 1995.

A. Consideration of the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter

35. At its 1st to 4th meetings the Working Group addressed the above question which was also addressed in the course of the general debate, as reflected in paragraphs 18 to 26 above.

36. In the Working Group, a number of representatives reiterated that they attached great importance to the question of assistance to third States affected by the application of sanctions. It was recalled that the topicality of the question had also been signalled in the report of the Secretary-General entitled "Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations" (A/50/60-S/1995/1) as well as in the statement of the President of the Security Council of 22 February 1995 (S/PRST/1995/9), both of which highlighted the urgency and the necessity of finding a durable solution to a problem which, it was recalled, had been foreseen by the drafters of Article 50 of the Charter. In the view of those representatives, since the application of sanctions was a collective measure imposed by the Security Council to restore international peace and security, any adverse effects should be borne equally by all States rather than by neighbouring and other States having close economic ties with the sanctioned State.

37. Other representatives, while recognizing the impact that sanctions could have on third States and the urgent need to assist adversely affected States, stressed that, in searching for a solution to the problem, one should never lose sight of the fact that the application of sanctions was an exceptional but necessary enforcement mechanism used by the Security Council where diplomatic channels had failed. It was therefore stressed that care be taken not to place impediments in the decision-making process of the Security Council, whose capacity to act in a quick and efficient manner should remain unimpaired. The remark was also made that, in a number of cases where the Security Council had found suffering to result from the application of sanctions, it had sought ways and means of minimizing that suffering.

38. Some representatives considered that a trust fund that would be funded through assessed as well as voluntary contributions as envisaged in operative paragraph 1 of the working paper submitted by a group of States at the Special Committee's 1994 session (A/AC.182/L.79) would be an effective mechanism for the provision of assistance to adversely affected States. Other new elements such as those mentioned in the Supplement to an Agenda for Peace, including the setting up of a mechanism within the Secretariat to evaluate the effects of sanctions before they were imposed with a view to mitigating them and to monitoring and evaluating the level of assistance that should be given to

adversely affected States, were also considered useful. It was noted that a solution to the question of assistance to affected third States could be found by means of improving the mechanisms and criteria concerning the implementation and lifting of sanctions.

39. Other representatives questioned the advisability of establishing a trust fund or creating any new mechanism that would hamper the Security Council in the discharge of its functions. Since all cases were sui generis, preference was expressed for a case-by-case treatment of each situation. Attention was also drawn to the danger inherent in the notion of a right to compensation in favour of affected States, which would introduce a conditional element in the obligation to implement sanctions. It was suggested that international financial institutions could play a useful role since they possessed the capacity to assist adversely affected States and the methodology to measure the impact of sanctions. The sanctions committees of the Security Council were also viewed as capable of providing help in handling problems related to the application of sanctions.

40. Some representatives called for full transparency in the proceedings of the Security Council and, where appropriate, of the sanctions committees with regard to the imposition, implementation, review and lifting of sanctions. It was suggested that all issues related to sanctions should be discussed by the sanctions committees in public meetings and in an open debate, and that States which were not members of these committees be informed of the results of such debate, inter alia, through the periodical circulation of the committees' decisions. The view was expressed that lack of transparency, arbitrary decisions and allegations might be perceived as aggravating the economic problems arising from sanctions. It was also noted that the implementation of sanctions could result in the disruption of communications and transportation lines. Furthermore, the view was expressed that sanctions should have clearly defined objectives and should be lifted once those objectives were met, so as not to prolong unnecessarily the adverse effects on third States and on innocent civilians. It was further stressed that the question of sanctions should not be looked at in isolation. Attention was drawn in that context to the enforcement and implementation costs for the United Nations. The proposal was also made by one delegation to introduce in the administration of sanctions regimes an element of cost recovery from those making applications to a sanctions committee and it was requested that the proposal be included in any study related to Article 50 of the Charter.

41. Several representatives expressed regret that the report of the Secretary-General called for under General Assembly resolution 49/58 had not been presented on time. The Working Group heard a statement by the Legal Counsel on the matter and noted that the Secretariat would make every effort to finalize the report well ahead of the next session of the General Assembly.

42. In the light of the above, the Working Group recommends to the Special Committee that it adopt the following text:

> "The Special Committee:
>
> "(a) Recalls the invitation addressed to the Secretary-General in General Assembly resolution 49/58 to prepare a report on the question of the implementation of the provisions of the Charter, including Article 50, related to the special economic problems confronting States arising from the carrying out of sanctions mandated under Chapter VII of the Charter, analysing the proposals and suggestions on this issue contained in the

report of the Committee on its 1994 session, giving due attention to the possible practical ways and means of carrying them out;

"(b) Considers that the Secretary-General might usefully take into account, in preparing that report, the suggestions and proposals contained in the report of the Special Committee on its 1995 session;

"(c) Invites the General Assembly to consider the establishment of an open-ended working group within the framework of the Sixth Committee, at the fiftieth session of the General Assembly, with a view to considering the issue of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, on the basis of the Secretary-General's report."

B. Consideration of the revised proposal submitted by the Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security

43. At its 11th meeting, on 8 March 1995, the Working Group considered the revised proposal submitted by the Libyan Arab Jamahiriya at the 1993 session of the Special Committee, the text of which read as follows:

"Revised proposal submitted by the Libyan Arab Jamahiriya with a view to enhancing the effectiveness of the Security Council in regard to the maintenance of international peace and security

"The maintenance of international peace and security is one of the primary purposes of the United Nations set forth in Article 1 of the Charter because of its far-reaching impact on the lives and welfare of peoples. To accomplish this aim, the framers of the Charter sought to adopt effective collective measures to prevent and eliminate threats to peace, to suppress acts of aggression and other breaches of the peace and to employ peaceful means, in accordance with the principles of justice and international law, for the resolution or settlement of disputes between States that might lead to a breach of the peace. The Security Council was entrusted with primary responsibility for the maintenance of international peace and security in order to ensure that action taken by the United Nations would be prompt and effective. Article 24 of the Charter records the agreement that, in carrying out its duties under this responsibility the Council acts on behalf of the Members of the United Nations.

"The experience of past decades, however, has shown that the Security Council has been unable to approximate the goals laid down by the framers of the Charter. Moreover, it has revealed an incapacity and a deficiency in coping with many issues which have prevented the Council from being an effective instrument and have had an adverse impact on bringing collective action to bear for the maintenance of peace, justice and the rule of law.

"The Libyan Arab Jamahiriya is of the view that there is a pressing need to evaluate the experience of past decades in an endeavour to strengthen the role of the Security Council in the maintenance of international peace and security. In presenting to the Special Committee on the Charter of the United Nations and on the Strengthening of the Role

of the Organization certain ideas that it feels would be of assistance in achieving this objective, it is aware that countries that are members of the Committee and other States have other views and ideas and that discussion in the Committee will be an important factor in enhancing and developing these ideas.

"(a) Discussion of ways and means of strengthening the role of the Security Council in regard to the maintenance of international peace and security in the light of past experience, and consideration of the elimination of the adverse consequences for the maintenance of international peace and security of the application of the principle of consensus among the permanent members of the Council, which has made it powerless to fulfil the responsibilities conferred on it under the Charter;

"(b) Identification of those non-procedural matters in which the use of the veto can be suspended or restricted. Subject to further negotiations, it would be appropriate to explore some fields in which the principle of consensus would not apply, such as its not being invoked to defend acts of aggression, occupation and injustice;

"(c) Much may be said of the changes that have taken place in the international arena and of the fact that they have mitigated the adverse consequences of the principle of consensus among permanent members because of the end of the confrontation between East and West. However, this is merely a factor of limited effect that does not render discussion of the principle unnecessary. In another respect, these changes have aroused fears of the domination by certain parties of the work of the Council and of its exploitation for the achievement of unilateral objectives. There is also manifest concern at the policy of the double standard that adheres to the positions adopted by the Council with regard to certain issues. All of this requires the exploration of measures to eliminate such fears and such concern and to promote justice and the rule of law;

"(d) Expansion of the membership of the Security Council to reflect the great increase that has taken place in the number of Members of the United Nations;

"(e) Consideration of strengthening the role of the General Assembly in the maintenance of international peace and security as a common responsibility of all Member States."

44. In introducing the proposal, the sponsor observed that its aim was to ensure the democratization of the Security Council and the reinforcement of the role of the General Assembly in a post-cold-war era. He also pointed out that it was necessary to re-examine the Security Council's methods of work in the light of past experience in order to ensure that it fulfilled its role in the maintenance of international peace and security in accordance with the Charter of the United Nations and the principles of sovereign equality of States and neutrality. He further noted that the Special Committee had not considered the proposal during previous sessions and expressed the hope that time would be devoted to it at the current session.

45. Some representatives expressed the view that the proposal deserved serious examination. The point was made that the question of the right of veto in the Security Council was of special importance since the privilege in question could be used contrary to the will of the majority of the members of the Council. It was also said that even if some aspects of the proposal were under consideration

in other United Nations forums, nothing prevented the Special Committee from making its own contribution to the study of those aspects.

46. Other delegations took the view that the proposal could not serve as a basis for a meaningful discussion in the Special Committee owing, inter alia, to the controversial and unbalanced nature of its provisions. It was furthermore considered to be inappropriate and redundant for the Committee to discuss issues addressed in an open-ended working group specially created by the General Assembly. The remark was also made that the fact that a number of delegations had refrained from commenting on the proposal should in no way be interpreted as acquiescence to any of its component parts.

C. Consideration of the working paper submitted by Cuba under the title "Strengthening of the role of the United Nations in the maintenance of international peace and security; strengthening of the role of the Organization and enhancing its effectiveness"

47. At the 12th meeting of the Working Group, on 9 March, the representative of Cuba introduced a second revised version of the working paper submitted by his delegation (A/AC.182/1995/CRP.1), which read as follows:

"STRENGTHENING OF THE ROLE OF THE UNITED NATIONS IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

"STRENGTHENING OF THE ROLE OF THE ORGANIZATION AND ENHANCING ITS EFFECTIVENESS

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, in the fulfilment of its mandate, must be directly linked to the transformations that are taking place in the United Nations and, in particular, to the growing awareness of the need to reform the Security Council by making it more representative and transparent.

"The increase in the membership of the Organization, the need to promote the balance envisaged in the Charter between the various principal organs, in particular the General Assembly and the Security Council, the full application of the principles of the sovereign equality of States and equitable geographical representation, and the importance of carrying out a democratization of the United Nations based on the universal nature of its composition, with truly equal rights and duties for all the States that constitute it - all impose on the Special Committee specific tasks that it must perform in fulfilment of its mandate.

"Accordingly, the Special Committee has the important task of contributing actively to the efforts currently under way with a view to expanding the membership of the Security Council in order to reform its procedures and working methods by bringing its wealth of experience to an analysis of the role of the Council in the current international situation, the Council's relations with the other principal organs and the States Members of the United Nations, and its obligations and prerogatives, in strict implementation of the letter and the spirit of the Charter.

"On the basis of the foregoing, the Special Committee should perform the following tasks:

"(a) Contribute, with studies of a legal nature, to the work of the open-ended Working Group established by General Assembly resolution 48/26, including the preparation of a report on the current and future composition of the Security Council, in the light of the principle of equitable geographical distribution;

"(b) Consider ways of improving relations between the General Assembly and the Security Council, proposing ways and means of ensuring that the Council reports to the Assembly, fully and promptly, as required under the Charter, particularly Articles 15 and 24. In this connection, it is imperative that the quality of the annual reports of the Council to the Assembly be improved by making them more comprehensive and analytical. Likewise, the provision of the Charter regarding the submission of special reports by the Council must be activated and the cases in which such reports are to be prepared must be determined;

"(c) Determine what elements should be included in the definitive rules of procedure of the Security Council;

"(d) Study the effects of the special privileges enjoyed by the permanent members of the Security Council, in the light of the principle of the sovereign equality of States, and the viability of eliminating or modifying them. In this connection, the Special Committee should focus on the significance of the veto in contemporary international affairs and recommend measures for its gradual elimination, including its limitation to certain topics;

"(e) Carry out a study, as soon as possible, of the cases in which the Security Council has invoked Chapter VII of the Charter and, in the light of this analysis, recommend specific guidelines for the application of this Chapter, respecting strictly the Council's areas of competency as set out in the Charter;

"(f) Contribute to the efforts under way to promote transparency in the work of the Security Council and, in particular, to improve and institutionalize the mechanisms being created for reporting to Council members. Particular attention should be paid to reports on the work done in informal consultations of the plenary Council, consultations with States particularly concerned by matters taken up by the Council and consultations with countries contributing troops to peace-keeping operations;

"(g) Make recommendations to ensure the effectiveness and efficiency of consultations held pursuant to Article 50 of the Charter and to formalize them to the greatest extent possible;

"(h) Propose measures to render the work of the sanctions committees more open and transparent.

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization may implement the aforementioned measures either directly or by creating subsidiary organs of an ad hoc nature."

48. In introducing the working paper, the sponsor explained that the underlying intention was to update the proposal presented at the Committee's previous session, in response to the interest it had elicited on the part of several delegations and in the light of the work carried out so far in the open-ended Working Group established under General Assembly resolution 48/26 to deal with the question of equitable representation on and increase in the membership of the Security Council. The proposal covered points of recognized importance, including, inter alia, the question of consultations under Article 50 of the Charter, and the work of the committees on sanctions. It sought to strengthen the legal contribution that the Special Committee could make towards the promotion of the Organization's goals.

49. The Working Group agreed that the proposal should be reproduced in the Committee's report with a view to considering it at the next session.

V. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

50. In accordance with the decision taken by the Special Committee at its 199th meeting pursuant to paragraph 4 (b) of General Assembly resolution 49/58, the question of the peaceful settlement of disputes between States was considered by the Working Group at its 4th to 11th meetings, from 1 to 8 March 1995.

A. Consideration of the draft United Nations Model Rules for the Conciliation of Disputes between States

51. The Working Group considered the above question at its 4th to 7th and 10th and 11th meetings. In accordance with the decision taken by the Special Committee at its 1994 session, 8/ the Working Group had before it the text of the United Nations Model Rules for the Conciliation of Disputes between States, as it emerged from the first reading of a proposal by Guatemala carried out during the 1994 session of the Committee. 9/ The Working Group also had before it amendments to the text of the draft Model Rules submitted by Guatemala (A/AC.182/L.83).

52. During the initial stage of the debate, hope was expressed that the consideration of the draft Model Rules would be finalized during the 1995 session of the Special Committee. Flexible, non-binding Model Rules endorsed by the General Assembly would, it was stated, represent a useful addition to existing arrangements for the peaceful settlement of disputes between States and a worthy contribution to the realization of the goals of the United Nations Decade of International Law.

53. At its 4th to 11th meetings, the Working Group conducted and completed a second reading of the text of the Model Rules, in particular of its bracketed provisions, in the light of the amendments submitted by Guatemala.

54. The Working Group was of the opinion that States could consider using the Model Rules when they envisaged resort to conciliation for the settlement of disputes.

55. The Working Group recommends that the General Assembly bring the following text of the Model Rules to the attention of States by annexing it to a decision or resolution to be adopted at the fiftieth session:

"UNITED NATIONS MODEL RULES FOR THE CONCILIATION OF DISPUTES BETWEEN STATES

"CHAPTER I

"APPLICATION OF THE RULES

"Article 1

"1. These rules apply to the conciliation of disputes between States where those States have expressly agreed in writing to their application.

"2. The States which agree to apply these rules may at any time, through mutual agreement, exclude or amend any of their provisions.

"CHAPTER II

"INITIATION OF THE CONCILIATION PROCEEDINGS

"Article 2

"1. The conciliation proceedings shall begin as soon as the States concerned (henceforth: the parties) have agreed in writing to the application of the present rules, with or without amendments, as well as on a definition of the subject of the dispute, the number and emoluments of members of the conciliation commission, its seat and the maximum duration of the proceedings, as provided in article 24. If necessary, the agreement shall contain provisions concerning the language or languages in which the proceedings are to be conducted and the linguistic services required.

"2. If the States cannot reach agreement on the definition of the subject of the dispute, they may by mutual agreement request the assistance of the Secretary-General of the United Nations to resolve the difficulty. They may also by mutual agreement request his assistance to resolve any other difficulty that they may encounter in reaching an agreement on the modalities of the conciliation proceedings.

"CHAPTER III

"NUMBER AND APPOINTMENT OF CONCILIATORS

"Article 3

"There may be three conciliators or five conciliators. In either case the conciliators shall form a commission.

"Article 4

"If the parties have agreed that three conciliators shall be appointed, each one of them shall appoint a conciliator, who may not be of its own nationality. The parties shall appoint by mutual agreement the third conciliator, who may not be of the nationality of any of the parties or of the other conciliators. The third conciliator shall act as president of the commission. If he is not appointed within two months of the appointment of the conciliators appointed individually by the parties, the third conciliator shall be appointed by the Government of a third State chosen by agreement between the parties or, if such agreement is not obtained within two months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next member of the Court in order of seniority who is not a national of the parties. The third conciliator shall not reside habitually in the territory of the parties or be or have been in their service.

"Article 5

"1. If the parties have agreed that five conciliators should be appointed, each one of them shall appoint a conciliator who may be of its own nationality. The other three conciliators, one of whom shall be chosen

with a view to his acting as president, shall be appointed by agreement between the parties from among nationals of third States and shall be of different nationalities. None of them shall reside habitually in the territory of the parties or be or have been in their service. None of them shall have the same nationality as that of the other two conciliators.

"2. If the appointment of the conciliators whom the parties are to appoint jointly has not been effected within three months, they shall be appointed by the Government of a third State chosen by agreement between the parties or, if such an agreement is not reached within three months, by the President of the International Court of Justice. If the President is a national of one of the parties, the appointment shall be made by the Vice-President or the next judge in order of seniority who is not a national of the parties. The Government or member of the International Court of Justice making the appointment shall also decide which of the three conciliators shall act as president.

"3. If, at the end of the three-month period referred to in the preceding paragraph, the parties have been able to appoint only one or two conciliators, the two conciliators or the conciliator still required shall be appointed in the manner described in the preceding paragraph. If the parties have not agreed that the conciliator or one of the two conciliators whom they have appointed shall act as president, the Government or member of the International Court of Justice appointing the two conciliators or the conciliator still required shall also decide which of the three conciliators shall act as president.

"4. If, at the end of the three-month period referred to in paragraph 2 of this article, the parties have appointed three conciliators but have not been able to agree which of them shall act as president, the president shall be chosen in the manner described in that paragraph.

"Article 6

"Vacancies which may occur in the commission as a result of death, resignation or any other cause shall be filled as soon as possible by the method established for appointing the members to be replaced.

"CHAPTER IV

"FUNDAMENTAL PRINCIPLES

"Article 7

"The commission, acting independently and impartially, shall endeavour to assist the parties in reaching an amicable settlement of the dispute. If no settlement is reached during the consideration of the dispute, the commission may draw up and submit appropriate recommendations to the parties for consideration.

"CHAPTER V

"PROCEDURES AND POWERS OF THE COMMISSION

"Article 8

"The commission shall adopt its own procedure.

"Article 9

"1. Before the commission begins its work, the parties shall designate their agents and shall communicate the names of such agents to the president of the commission. The president shall determine, in agreement with the parties, the date of the commission's first meeting, to which the members of the commission and the agents shall be invited.

"2. The agents of the parties may be assisted before the commission by counsel and experts appointed by the parties.

"3. Before the first meeting of the commission, its members may meet informally with the agents of the parties, if necessary, accompanied by the appointed counsel and experts to deal with administrative and procedural matters.

"Article 10

"1. At its first meeting, the commission shall appoint a secretary.

"2. The secretary of the commission shall not have the nationality of any of the parties, shall not reside habitually in their territory and shall not be or have been in the service of any of them. He may be a United Nations official if the parties agree with the Secretary-General on the conditions under which the official will exercise these functions.

"Article 11

"1. As soon as the information provided by the parties so permits, the commission, having regard, in particular, to the time-limit laid down in article 24, shall decide in consultation with the parties whether the parties should be invited to submit written pleadings and, if so, in what order and within what time-limits, as well as the dates when, if necessary, the agents and counsel will be heard. The decisions taken by the commission in this regard may be amended at any later stage of the proceedings.

"2. Subject to the provisions of article 20, paragraph 1, the commission shall not allow the agent or counsel of one party to attend a meeting without having also given the other party the opportunity to be represented at the same meeting.

"Article 12

"The parties, acting in good faith, shall facilitate the commission's work and, in particular, shall provide it to the greatest possible extent with whatever documents, information and explanations may be relevant.

"Article 13

"1. The commission may ask the parties for whatever relevant information or documents, as well as explanations, it deems necessary or useful. It may also make comments on the arguments advanced as well as the statements or proposals made by the parties.

"2. The commission may accede to any request by a party that persons whose testimony it considers necessary or useful be heard, or that experts be consulted.

"Article 14

"In cases where the parties disagree on issues of fact, the commission may use all means at its disposal, such as the joint expert advisers mentioned in article 15, or consultation with experts, to ascertain the facts.

"Article 15

"The commission may propose to the parties that they jointly appoint expert advisers to assist it in the consideration of technical aspects of the dispute. If the proposal is accepted, its implementation shall be conditional upon the expert advisers being appointed by the parties by mutual agreement and accepted by the commission and upon the parties fixing their emoluments.

"Article 16

"Each party may at any time, at its own initiative or at the initiative of the commission, make proposals for the settlement of the dispute. Any proposal made in accordance with this article shall be communicated immediately to the other party by the president, who may, in so doing, transmit any comment the commission may wish to make thereon.

"Article 17

"At any stage of the proceedings, the commission may, at its own initiative or at the initiative of one of the parties, draw the attention of the parties to any measures which in its opinion might be advisable or facilitate a settlement.

"Article 18

"The commission shall endeavour to take its decisions unanimously but, if unanimity proves impossible, it may take them by a majority of votes of its members. Abstentions are not allowed. Except in matters of procedure, the presence of all members shall be required in order for a decision to be valid.

"Article 19

"The commission may, at any time, ask the Secretary-General of the United Nations for advice or assistance with regard to the administrative or procedural aspects of its work.

"CHAPTER VI

"CONCLUSION OF THE CONCILIATION PROCEEDINGS

"Article 20

"1. On concluding its consideration of the dispute, the commission may, if full settlement has not been reached, draw up and submit appropriate recommendations to the parties for consideration. To that end, it may hold an exchange of views with the agents of the parties, who may be heard jointly or separately.

"2. The recommendations adopted by the commission shall be set forth in a report communicated by the president of the commission to the agents of the parties, with a request that the agents inform the commission, within a given period, whether the parties accept them. The president may include in the report the reasons which, in the commission's view, might prompt the parties to accept the recommendations submitted. The commission shall refrain from presenting in its report any final conclusions with regard to facts or from ruling formally on issues of law, unless the parties have jointly asked it to do so.

"3. If the parties accept the recommendations submitted by the commission, a procès-verbal shall be drawn up setting forth the conditions of acceptance. The procès-verbal shall be signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

"4. Should the commission decide not to submit recommendations to the parties, its decision to that effect shall be recorded in a procès-verbal signed by the president and the secretary. A copy thereof signed by the secretary shall be provided to each party. This shall conclude the proceedings.

"Article 21

"1. The recommendations of the commission will be submitted to the parties for consideration in order to facilitate an amicable settlement of the dispute. The parties undertake to study them in good faith, carefully and objectively.

"2. If one of the parties does not accept the recommendations and the other party does, it shall inform the latter, in writing, of the reasons why it could not accept them.

"Article 22

"1. If the recommendations are not accepted by both parties but the latter wish efforts to continue in order to reach agreement on different terms, the proceedings shall be resumed. Article 24 shall apply to the resumed proceedings, with the relevant time-limit, which the parties may, by mutual agreement, shorten or extend, running from the commission's first meeting after resumption of the proceedings.

"2. If the recommendations are not accepted by both parties and the latter do not wish further efforts to be made to reach agreement on different terms, a procès-verbal signed by the president and the secretary of the commission shall be drawn up, omitting the proposed terms and indicating that the parties were unable to accept them and do not wish further efforts to be made to reach agreement on different terms. The proceedings shall be concluded when each party has received a copy of the procès-verbal signed by the secretary.

"Article 23

"Upon conclusion of the proceedings, the president of the commission shall, with the prior agreement of the parties, deliver the documents in the possession of the secretariat of the commission either to the Secretary-General of the United Nations or to another person or entity agreed upon by the parties. Without prejudice to the possible application of article 26, paragraph 2, the confidentiality of the documents shall be preserved.

"Article 24

"The commission shall conclude its work within the period agreed upon by the parties. Any extension of this period shall be agreed upon by the parties.

"CHAPTER VII

"CONFIDENTIALITY OF THE COMMISSION'S WORK AND DOCUMENTS

"Article 25

"1. The commission's meetings shall be closed. The parties and the members and expert advisers of the commission, the agents and counsel of the parties, and the secretary and the secretariat staff, shall maintain strictly the confidentiality of any documents or statements, or any communication concerning the progress of the proceedings unless their disclosure has been approved by both parties in advance.

"2. Each party shall receive, through the secretary, certified copies of any minutes of the meetings at which it was represented.

"3. Each party shall receive, through the secretary, certified copies of any documentary evidence received and of experts' reports, records of investigations and statements by witnesses.

"Article 26

"1. Except with regard to certified copies referred to in article 25, paragraph 3, the obligation to respect the confidentiality of the proceedings and of the deliberations shall remain in effect for the parties and for members of the commission, expert advisers and secretariat staff after the proceedings are concluded and shall extend to recommendations and proposals which have not been accepted.

"2. Notwithstanding the foregoing, the parties may, upon conclusion of the proceedings and by mutual agreement, make available to the public all or some of the documents that in accordance with the preceding paragraph are to remain confidential, or authorize the publication of all or some of those documents.

"CHAPTER VIII

"OBLIGATION NOT TO ACT IN A MANNER WHICH MIGHT HAVE AN ADVERSE EFFECT ON THE CONCILIATION

"Article 27

"The parties shall refrain during the conciliation proceedings from any measure which might aggravate or widen the dispute. They shall, in particular, refrain from any measures which might have an adverse effect on the recommendations submitted by the commission, so long as those recommendations have not been explicitly rejected by either of the parties.

"CHAPTER IX

"PRESERVATION OF THE LEGAL POSITION OF THE PARTIES

"Article 28

"1. Except as the parties may otherwise agree, neither party shall be entitled in any other proceedings, whether in a court of law or before arbitrators or before any other body, entity or person, to invoke any views expressed or statements, admissions or proposals made by the other party in the conciliation proceedings, but not accepted, or the report of the commission, the recommendations submitted by the commission or any proposal made by the commission, unless agreed to by both parties.

"2. Acceptance by a party of recommendations submitted by the commission in no way implies any admission by it of the considerations of law or of fact which may have inspired the recommendations.

"CHAPTER X

"COSTS

"Article 29

"The costs of the conciliation proceedings and the emoluments of expert advisers appointed in accordance with article 15, shall be borne by the parties in equal shares."

B. Consideration of the proposal submitted by Sierra Leone under the title "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes"

56. In accordance with paragraph 4 (b) (ii) of General Assembly resolution 49/58, the Working Group, at its 8th and 9th meetings, on 7 March, considered the proposal of Sierra Leone entitled "Establishment of a Dispute Settlement Service offering or responding with its services early in disputes", which read as follows:

"Establishment of a Dispute Settlement Service offering or responding with its services early in disputes

"I. INTRODUCTION

"The early offering of non-imposed dispute settlement services is provided both for preventing conflicts and enhancing dispute settlement through the establishment of a permanent mechanism, subject to restraint by the Security Council and involving the Secretary-General. It will function without disturbing the existing constitutional balance among the organs.

"The services can be offered directly by the five Service Administrators, elected on a regional basis, under clearly defined conditions and strict confidentiality. The offer of the services can be requested by the Security Council. Also, subject to certain conditions,

the services can be provided on request by all parties to a dispute, the General Assembly, or if recommended by the Secretary-General.

"If any of the disputing parties rejects the services, the process will be terminated. A later offering of services can be made to the parties at a more favourable time.

"If the services are accepted, the parties will choose any number of settlors a/ from a roster of qualified persons previously proposed by Member States.

"The parties will establish the rules for any ensuing dispute settlement session. Similarly, matters relating to the timing and nature of reports would be agreed upon by the parties and the settlors. No doubt, starting the process itself would be considered a major accomplishment.

"The administrative structure of the Service, its formation and function, the source of secretarial staff and the availability of early warning resources are outlined in the detailed proposal.

"Following the text of the present proposal, an explanatory note is given in section III, which describes the advantages of the Service at length.

"II. PROPOSAL

"1. The Dispute Settlement Service shall be implemented through a board of five Administrators, with five alternates, elected by the Sixth Committee and confirmed by the General Assembly, on the basis of equitable geographical distribution, for a term of three years. The Administrators shall be eligible for re-election.

"2. The Secretary-General, or his representative, shall have a seat on the Board of Administrators, but without the right to vote. In this capacity, the Secretary-General or his representative, will place his expertise at the disposal of the Board, and in order to avoid conflict, will keep the Board informed of the existence of such matters as referred to in Article 12, paragraph 2, of the Charter of the United Nations.

"3. The Chairman of the Board of Administrators shall be chosen by the Administrators.

"4. The Board of Administrators shall be located in New York. Secretarial services for the Board shall be provided by the Secretariat, bearing in mind the nature of the Board. b/

"5. The Dispute Settlement Service may be activated directly by a simple majority of the Board of Administrators in their offering of services early in disputes, subject to paragraphs 6 and 7, unless opposed by the Administrator from the region in which the disputing parties are involved.

"6. The activities of the Service cannot be invoked to prevent the Security Council from exercising its powers under the Charter in any dispute or situation likely to endanger international peace and security.

"7. The offering of services by the Dispute Settlement Service may be prevented by the Security Council under Article 27, paragraph 2, of the Charter.

"8. The Service may be activated by a decision of the Security Council. It may also be activated at the request of the General Assembly, as well as on the recommendation of the Secretary-General, subject to paragraphs 6 and 7.

"9. If any of the parties to the dispute rejects the initial offer of services, or does so at a later stage, the procedure is terminated. A rejection would not prevent a later attempt to offer services at a more favourable time.

"10. The Service may be activated at the request of all parties to a given dispute, subject to paragraphs 6 and 7.

"11. No offer of services shall be made to parties in dispute if a preceding effort to settle such a dispute is already being implemented by an activity established for that purpose, unless the parties request aid from or transfer responsibility to the Service.

"12. After a decision is made to activate the Service, the Chairman, or other designated Administrator, shall contact the parties in the offer of services under strict confidentiality. If the parties so desire, no party shall be identified as accepting or rejecting the services, except in confidence to the other Administrators, the Secretary-General, in accordance with paragraph 2, or by the request of the Security Council.

"13. After a rejection of the initial offer of services or the later abandoning of the process by any party at a later stage, the Chairman shall issue a report that the services cannot be implemented due to unfavourable conditions at the time. Only the Security Council, for its own confidential information concerning the rejection, and likewise the Secretary-General, for his own function of offering services independent of this Service, shall receive any supplementary information on request.

"14. If the offer of services is accepted by all parties to the dispute, the parties will select an agreed number of settlors from the Roster of Settlors.

"15. The Roster of Settlors shall be composed of qualified individuals willing to serve in dispute settlement nominated by Member States. No more than three settlors may be nominated by each Member State. Nothing in this Service shall disqualify any of the Administrators or the Secretary-General from acting in the capacity of a settlor if so desired by the disputing parties.

"16. The Roster of Settlors shall be maintained and updated by the Office of Legal Affairs and shall be made available to all Member States and any disputing parties.

"17. After accepting the services, the parties shall bear all costs of subsequent dispute settlement sessions. c/

"18. Operating procedures, including venue, number, and timing of sessions, shall be established by the parties to the dispute and the settlors. Any

interim report or that of the final dispute decision shall be released to the Board of Administrators by the settlors, as determined by the parties. Any other procedural regulations inconsistent with this mandate of the Service shall not apply.

"19. The Board of Administrators shall make an annual report to the General Assembly on the activities of the Service.

"20. The Secretary-General maintains his option of offering his good offices in the settlement of disputes independent of his role in the operation of this Service. Also, all other options using existing United Nations machinery and procedures intended for enhancing the peaceful settlement of disputes remain available independent of this Service.

"21. For purposes of early warning, the Administrators are encouraged to draw upon the resources of the Secretariat and their respective regions regarding new and potential disputes in which this Service may be crucial.

"22. In order to encourage the use of this Service, the Secretariat shall disseminate information regarding it to all Member States and on as wide a geographical basis as possible.

"III. EXPLANATORY NOTE

"The Dispute Settlement Service that is being proposed will have the following advantages. It will:

"(a) Provide an option for the Security Council and the Secretary-General in their commitment to the maintenance of international peace and security, without threatening the existing constitutional balance of the organs;

"(b) Make for a desirable General Assembly influence in the peaceful settlement of disputes, thus contributing to the maintenance of international peace and security;

"(c) Strengthen the recourse of parties to a dispute to a regional solution by providing Administrators and a Roster of Settlors which will contain eminent personalities from their respective regions;

"(d) Provide a self-triggering mechanism which will utilize an available Roster of Settlors. Such a mechanism repairs the deficiency existing in the register on fact-finding, which was established by General Assembly resolution 2329 (XXII) and which became moribund;

"(e) Involve the Secretary-General as a member of the Board of Administrators where his advice assures maintaining the constitutional balance of the main organs of the Organization and his availability to serve in the capacity of a settlor at a critical period in the dispute settlement sessions if desired by the parties;

"(f) Utilize a Board of Administrators primarily for the offering of services to the disputing parties or for responses to requests for the services; but it is the chosen settlors who represent the primary mechanism for the dispute settlement process;

"(g) Expand the scope of expertise available to disputing parties by using settlors who will be drawn from as varied a field of qualified personalities as possible to be engaged actively in measures of a peacemaking nature;

"(h) Allow the choice of dispute settlement options provided by Article 33, paragraph 1, of the Charter in any appropriate relation or sequence after the parties have accepted the services, chosen their settlors and considered with the latter directions and planning of their subsequent action, including the currently proposed United Nations rules for the conciliation of disputes between States;

"(i) Make use of the Secretariat as the pool for secretarial services, as well as the repository of the Roster of Settlors and the wide dissemination of the same;

"(j) Anticipate a relatively low financial cost of operation by being associated with an existing organ of the Organization and by having the Board of Administrators located in New York and requiring parties accepting the services to bear the cost of the subsequent dispute settlement process (see footnote c/ to paragraph 17 of the proposal);

"(k) Enhance the growing interest and emphasis on regional approaches within the Organization;

"(l) Encourage the use of early warning of disputes so as to minimize their deterioration;

"(m) Utilize the offering to disputing parties of non-imposed services which, at their wish, may include a desired binding settlement which could be recorded by the United Nations;

"(n) Introduce a flexibility of approach in the manner in which the Service will function in relation to the organs of the Organization as well as to disputing parties;

"(o) Strengthen the United Nations system by helping to move some of its dispute settlement options from an ad hoc arrangement to that of a permanent mechanism;

"(p) Keep peacemaking as proposed clearly in its basic tradition, the peaceful settlement of disputes, as foreseen in Chapter VI of the Charter of the United Nations, in contrast to peace enforcement, which is perceived as a projection of provisional measures as defined in Chapter VII, Article 40, of the Charter in respect to breaches of the peace and acts of aggression, but where both proposals are distinct permanent mechanisms to meet new challenges of the times.

"Notes

"a/ A settlor, as defined in this Service, is one who induces a settlement between disputing parties, i.e., a negotiator, mediator, conciliator, good officer, or fact finder or some combination thereof which could also lead to one who makes a settlement, i.e., an arbitrator or a judge. The categories mentioned above comprising a settlor can all relate

to a dispute settlement option as provided for under Article 33, paragraph 1, of the Charter of the United Nations.

"b/ It is anticipated that such secretarial services will be drawn from the Office of Legal Affairs.

"c/ The fund established by the Secretary-General for parties appearing before the International Court of Justice may, if considered appropriate, be put at the disposal of parties in dispute experiencing financial difficulties."

57. In introducing the proposal, the sponsor noted that in the absence of an identifiable mechanism, needed for the fuller utilization of the potential of the Charter of the United Nations in the area of prevention and peaceful settlement of disputes, the establishment of the proposed dispute settlement service within the framework of the United Nations would fill a lacuna and contribute to conflict avoidance in a post-cold-war era. He added that the establishment of the proposed mechanism, being based on the Charter, would give effect to the role of the United Nations under Chapter VI of the Charter.

58. Delegations, while generally welcoming the intention underlying the initiative, were of the view that the proposal required clarification. Questions were raised as to how the proposed mechanism could be distinguished from other existing mechanisms in the field of the peaceful settlement of disputes, such as fact-finding commissions, conciliation commissions, arbitration courts, etc. Concern was expressed over possible duplication and the proposal was viewed as very schematic and lacking in clearly defined financial and administrative parameters. Clarification was also sought as to the role of the proposed Board of Administrators and roster of settlors, as well as of the Secretary-General, in the proposed mechanism.

59. The sponsor pointed out that the proposed dispute settlement service consisted of two parts. There was first the Board of Administrators, made up of five individuals who could be proposed by the Sixth Committee and elected by the General Assembly. The Board would offer dispute settlement services to Member States and receive requests from parties to disputes. It could also be approached by the Security Council and by the General Assembly. The Administrators would be diplomats at the highest level posted in New York, namely Permanent Representatives to the United Nations, selected by the regional groups. There would be no cost to the Organization since the Administrators would not be remunerated.

60. Secondly, there would be established a roster of settlors (i.e., a list of eminent persons willing to serve as mediators, conciliators, arbitrators, etc.), which would not entail any costs for the Organization either since nothing more was involved than a list of individuals with various qualifications and ready to put their services at the disposal of the Organization.

61. The Secretary-General would have a seat on the Board of Administrators but would not have the right to vote.

62. The sponsor stressed that the proposal was in keeping with the Charter, respected State sovereignty and represented a tool for preventive diplomacy. In the light of the debate, he undertook to prepare a detailed commentary of the proposal focusing on the points which had given rise to requests for clarification, it being understood that the Special Committee would revert to the proposal at its next session.

63. The Working Group generally welcomed this approach and encouraged the sponsor to highlight those aspects of the proposal which made it different from other existing mechanisms in the field of the peaceful settlement of disputes.

VI. QUESTION OF THE DELETION OF THE "ENEMY STATE" CLAUSES OF THE CHARTER OF THE UNITED NATIONS

64. The question of the deletion of the "enemy State" clauses of the Charter of the United Nations was discussed at the 8th, 13th and 14th meetings of the Working Group, from 7 to 10 March 1995, in accordance with paragraph 4 (c) of General Assembly resolution 49/58 of 9 December 1994.

65. As a result of its deliberations on the question, the Working Group recommends that the Special Committee submit the following draft resolution for consideration and adoption by the General Assembly:*

Draft resolution

The General Assembly,

Recalling its resolution 49/58 of 9 December 1994,

Having considered the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which met in New York from 27 February to 10 March 1995,

Taking note of the recommendation of the Special Committee on the most appropriate legal action to be taken on the question of the deletion of the "enemy State" clauses from Articles 53, 77 and 107 of the Charter of the United Nations,

Recognizing that, having regard to the substantial changes that have taken place in the world, the "enemy State" clauses in Articles 53, 77 and 107 of the Charter of the United Nations have become obsolete,

Noting that the States to which those clauses were directed are Members of the United Nations and represent a valuable asset in all the endeavours of the Organization,

Taking into account the complex process involved in amending the Charter,

Expresses its intention to initiate the procedure set out in Article 108 of the Charter of the United Nations to amend the Charter, with prospective effect, by the deletion of the "enemy State" clauses from Articles 53, 77 and 107 at its earliest appropriate future session.

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* Some delegations, while fully supporting the elimination of the "enemy State" clauses from the Charter of the United Nations, stressed that this question could not be taken in isolation, but should be viewed as an integral part of the broad process of reforms to the Charter that was being examined by the General Assembly. They therefore considered that the amendment procedure should be undertaken in this larger context.

VII. REVIEW OF THE MEMBERSHIP OF THE SPECIAL COMMITTEE

66. In accordance with paragraph 7 of General Assembly resolution 49/58, the Working Group continued its review of its membership and considered in particular the proposal on the full participation of all Member States in its work.

67. After considering this issue at its 10th and 11th meetings, on 8 March 1995, the Working Group agreed on the following text:

> "The Special Committee recommends that the General Assembly decide that the Committee will henceforth be open to all States Members of the United Nations and that it will continue to operate on the basis of the practice of consensus."

Notes

1/ For the list of members of the Committee at its 1995 session, see A/AC.182/INF.20 and Add.1.

2/ Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

3/ Ibid., Forty-ninth Session, Supplement No. 33 (A/49/33), para. 52.

4/ Ibid., Forty-eighth Session, Supplement No. 33 and corrigendum (A/48/33 and Corr.1), para. 95.

5/ Ibid., Forty-ninth Session, Supplement No. 33 (A/49/33), para. 107.

6/ See para. 47 below.

7/ See para. 43 below.

8/ See Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33 (A/49/33), para. 108.

9/ Ibid., para. 107.